

1-1 By: Ellis S.B. No. 1605
1-2 (In the Senate - Filed March 14, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 16, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 16, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1605 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a revenue bond program for, and to the operation of, the
1-11 Fair Plan Association.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter E, Chapter 21, Insurance Code, is
1-14 amended by adding Article 21.49A-1 to read as follows:

1-15 Art. 21.49A-1. REVENUE BOND PROGRAM FOR FAIR PLAN
1-16 ASSOCIATION

1-17 Sec. 1. PURPOSE. The legislature finds that the issuance of
1-18 public securities to provide a method to raise funds to provide
1-19 residential property insurance through the FAIR Plan Association in
1-20 this state is for the benefit of the public and in furtherance of a
1-21 public purpose.

1-22 Sec. 2. DEFINITIONS. In this article:

1-23 (1) "Association" means the FAIR Plan Association
1-24 established under Article 21.49A of this code.

1-25 (2) "Public security resolution" means the resolution
1-26 or order authorizing public securities to be issued under this
1-27 article.

1-28 (3) "Bond" means any debt instrument or public
1-29 security issued by the Texas Public Finance Authority.

1-30 (4) "Board" means the board of directors of the Texas
1-31 Public Finance Authority.

1-32 (5) "Insurer" means any insurer required to
1-33 participate in the association under Section 5, Article 21.49A, of
1-34 this code, including a Lloyd's plan or a reciprocal or
1-35 interinsurance exchange.

1-36 Sec. 3. PUBLIC SECURITIES AUTHORIZED; APPLICATION OF TEXAS
1-37 PUBLIC FINANCE AUTHORITY ACT. (a) At the request of the
1-38 association, the Texas Public Finance Authority shall issue public
1-39 securities to:

1-40 (1) fund the association, including:

1-41 (A) to establish and maintain reserves to pay
1-42 claims;

1-43 (B) to pay operating expenses; and

1-44 (C) to purchase reinsurance;

1-45 (2) pay costs related to issuance of the public
1-46 securities; and

1-47 (3) pay other costs related to the public securities
1-48 as may be determined by the board.

1-49 (b) To the extent not inconsistent with this article,
1-50 Chapter 1232, Government Code, applies to public securities issued
1-51 under this article. In the event of a conflict, this article
1-52 controls.

1-53 Sec. 4. APPLICABILITY OF OTHER STATUTES. The following
1-54 laws apply to public securities issued under this article to the
1-55 extent consistent with this article:

1-56 (1) Chapters 1201, 1202, 1204, 1205, 1231, and 1371,
1-57 Government Code; and

1-58 (2) Subchapter A, Chapter 1206, Government Code.

1-59 Sec. 5. LIMITS. The Texas Public Finance Authority may
1-60 issue, on behalf of the association, public securities in a total
1-61 amount not to exceed \$75 million.

1-62 Sec. 6. CONDITIONS. (a) Public securities issued under
1-63 this article may be issued at public or private sale.

2-1 (b) Public securities may mature not more than 10 years
2-2 after the date issued.

2-3 (c) Public securities must be issued in the name of the
2-4 association.

2-5 Sec. 7. ADDITIONAL COVENANTS. In a public security
2-6 resolution, the board may make additional covenants with respect to
2-7 the public securities and the designated income and receipts of the
2-8 association pledged to their payment, and may provide for the flow
2-9 of funds and the establishment, maintenance, and investment of
2-10 funds and accounts with respect to the public securities.

2-11 Sec. 8. SPECIAL ACCOUNTS. (a) A public security
2-12 resolution may establish special accounts, including an interest
2-13 and sinking fund account, reserve account, and other accounts.

2-14 (b) The association shall administer the accounts in
2-15 accordance with Article 21.49A of this code.

2-16 Sec. 9. SECURITY. (a) Public securities are payable only
2-17 from the service fee established under Section 10 of this article or
2-18 other amounts that the association is authorized to levy, charge,
2-19 and collect.

2-20 (b) Public securities are obligations solely of the
2-21 association. Public securities do not create a pledging, giving,
2-22 or lending of the faith, credit, or taxing authority of this state.

2-23 (c) Each public security must include a statement that the
2-24 state is not obligated to pay any amount on the public security and
2-25 that the faith, credit, and taxing authority of this state are not
2-26 pledged, given, or lent to those payments.

2-27 (d) Each public security issued under this article must
2-28 state on its face that the public security is payable solely from
2-29 the revenues pledged for that purpose and that the public security
2-30 does not and may not constitute a legal or moral obligation of the
2-31 state.

2-32 Sec. 10. SERVICE FEE. (a) A service fee may be assessed
2-33 against:

- 2-34 (1) each insurer; and
- 2-35 (2) the association.

2-36 (b) The service fee shall be set by the commissioner in an
2-37 amount sufficient to pay all debt service on the public securities.
2-38 The service fee shall be paid by each insurer and the association as
2-39 required by the commissioner by rule.

2-40 (c) The comptroller shall collect the service fee and the
2-41 department shall reimburse the comptroller in the manner described
2-42 by Article 4.19 of this code.

2-43 (d) The commissioner, in consultation with the comptroller,
2-44 may coordinate payment and collection of the service fee with other
2-45 payments made by insurers and collected by the comptroller.

2-46 (e) As a condition of engaging in the business of insurance
2-47 in this state, an insurer agrees that if the company leaves the
2-48 property insurance market in this state the insurer remains
2-49 obligated to pay, until the public securities are retired, the
2-50 insurer's share of the service fee assessed under this section in an
2-51 amount proportionate to that insurer's share of the property
2-52 insurance market, including residential property insurance, in
2-53 this state as of the last complete reporting period before the date
2-54 on which the insurer ceases to engage in that insurance business in
2-55 this state. The proportion assessed against the insurer shall be
2-56 based on the insurer's gross premiums for property insurance,
2-57 including residential property insurance, for the insurer's last
2-58 reporting period.

2-59 Sec. 11. TAX EXEMPT. The public securities issued under
2-60 this article, any interest from those public securities, and all
2-61 assets pledged to secure the payment of the public securities are
2-62 free from taxation by the state or a political subdivision of this
2-63 state.

2-64 Sec. 12. AUTHORIZED INVESTMENTS. The public securities
2-65 issued under this article constitute authorized investments under
2-66 Articles 2.10 and 3.33 and Subpart A, Part I, Article 3.39, of this
2-67 code.

2-68 Sec. 13. STATE PLEDGE. The state pledges to and agrees with
2-69 the owners of any public securities issued in accordance with this

3-1 article that the state will not limit or alter the rights vested in
 3-2 the association to fulfill the terms of any agreements made with the
 3-3 owners of the public securities or in any way impair the rights and
 3-4 remedies of those owners until the public securities, bond premium,
 3-5 if any, or interest, and all costs and expenses in connection with
 3-6 any action or proceeding by or on behalf of those owners, are fully
 3-7 met and discharged. The association may include this pledge and
 3-8 agreement of the state in any agreement with the owners of the
 3-9 public securities.

3-10 Sec. 14. ENFORCEMENT BY MANDAMUS. A writ of mandamus and
 3-11 all other legal and equitable remedies are available to any party at
 3-12 interest to require the association and any other party to carry out
 3-13 agreements and to perform functions and duties under this article,
 3-14 the Texas Constitution, or a public security resolution.

3-15 SECTION 2. Subsection (e), Section 3, Article 21.49A,
 3-16 Insurance Code, is amended to read as follows:

3-17 (e) The plan of operation shall provide:

3-18 (1) for establishment of a FAIR Plan Association for
 3-19 the issuing of residential property insurance pursuant to this Act
 3-20 and the distribution of the losses and the expenses in the writing
 3-21 of such insurance in this state;

3-22 (2) that all insurers licensed to write property
 3-23 insurance and writing residential property insurance shall
 3-24 participate in the writings, expenses, [~~profits,~~] and losses of the
 3-25 association, in the proportion that the net direct premiums, of
 3-26 each participating insurer, written in this state during the
 3-27 preceding calendar year, bear to the aggregate net direct premium
 3-28 written in this state by all participating insurers; such
 3-29 information shall be determined in accordance with the residential
 3-30 property statistical plan adopted by the commissioner;

3-31 (3) that a participating insurer is entitled to
 3-32 receive credit for similar insurance voluntarily written in a
 3-33 designated underserved area and its participation in the writings
 3-34 in the association shall be reduced in accordance with the
 3-35 provisions of the plan of operation;

3-36 (4) for the immediate binding of eligible risks; for
 3-37 the use of premium installment payment plans, adequate marketing,
 3-38 and service facilities; and for the establishment of reasonable
 3-39 service standards;

3-40 (5) procedures for efficient, economical, fair, and
 3-41 nondiscriminatory administration of the FAIR Plan Association;

3-42 (6) procedures for determining the net level of
 3-43 participation required for each insurer in the FAIR Plan
 3-44 Association;

3-45 (7) for the use of deductibles and other underwriting
 3-46 devices and for assessment of all members in amounts sufficient to
 3-47 operate the association; and establish maximum limits of liability
 3-48 to be placed through the program; and commissions to be paid to the
 3-49 licensed agents submitting applications;

3-50 (8) that the association issue policies in its own
 3-51 name;

3-52 (9) reasonable underwriting standards for determining
 3-53 insurability of the risk;

3-54 (10) procedures for the assumption and ceding of
 3-55 reinsurance by the association; and

3-56 (11) any other procedures or operational matters
 3-57 deemed necessary by the governing committee or the commissioner.

3-58 SECTION 3. Subsection (d), Section 5, Article 21.49A,
 3-59 Insurance Code, is amended to read as follows:

3-60 (d) Each insurer must participate in the writings,
 3-61 expenses, [~~profits,~~] and losses of the association in the
 3-62 proportion that its net direct premiums written bear to the
 3-63 aggregate net direct premiums written by all insurers.

3-64 SECTION 4. Section 11, Article 21.49A, Insurance Code, is
 3-65 amended to read as follows:

3-66 Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a
 3-67 deficit occur in the association, the association, at the direction
 3-68 of the commissioner, shall either request the issuance of public
 3-69 securities as authorized by Article 21.49A-1 of this code or assess

4-1 participating insurers in accordance with this section. Each [~~and~~
4-2 ~~each~~] insurer may charge a premium surcharge on every property
4-3 insurance policy issued by it insuring property in this state, the
4-4 effective date of which policy is within the three-year period
4-5 commencing 90 days after the date of assessment by the association
4-6 under this section. The amount of the surcharge shall be calculated
4-7 on the basis of a uniform percentage of the premium on such policies
4-8 equal to one-third of the ratio of the amount of an insurer's
4-9 assessment to the amount of its direct earned premiums as reported
4-10 in its financial statement to the department for the calendar year
4-11 immediately preceding the year in which the assessment is made,
4-12 such that over the period of three years the aggregate of all such
4-13 surcharges by an insurer shall be equal to the amount of the
4-14 assessment of such insurer. The minimum surcharges on a policy may
4-15 be \$1; all surcharges may be rounded to the nearest dollar.

4-16 SECTION 5. Article 21.49A, Insurance Code, is amended by
4-17 adding Section 15 to read as follows:

4-18 Sec. 15. RETENTION OF PROFITS. The association shall
4-19 retain any profits of the association to be used for the purposes of
4-20 the association. The profits of the association may not be
4-21 distributed to insurers.

4-22 SECTION 6. The changes in law made by this Act to Article
4-23 21.49A, Insurance Code, apply only to the profits earned by the FAIR
4-24 Plan Association in accordance with that article on or after the
4-25 effective date of this Act.

4-26 SECTION 7. This Act takes effect immediately if it receives
4-27 a vote of two-thirds of all the members elected to each house, as
4-28 provided by Section 39, Article III, Texas Constitution. If this
4-29 Act does not receive the vote necessary for immediate effect, this
4-30 Act takes effect September 1, 2003.

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